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1 PAUL L. REIN, Esq. (SBN 43053)  
2 CELIA MCGUINNESS, Esq. (SBN 159420)  
3 CATHERINE M. CABALO (SBN 248198)  
4 LAW OFFICES OF PAUL L. REIN  
5 200 Lakeside Drive, Suite A  
6 Oakland, CA 94612  
7 Telephone: 510/832-5001  
8 Facsimile: 510/832-4787

9 Attorneys for Plaintiff  
10 AL DE LA CAMPA

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

JSC

13 AL DE LA CAMPA,  
14 Plaintiff,

CASE NO.  
Civil Rights

**C13-2184**

15 v.

16 BENIHANA, INC.; BENIHANA  
17 NATIONAL CORPORATION;  
18 EQUITY ONE, INC.; ANGELO,  
19 GORDON & CO., L.P.; and  
20 DOES 1-20, inclusive,

COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF AND  
DAMAGES: DENIAL OF CIVIL RIGHTS  
AND ACCESS TO PUBLIC FACILITIES TO  
PHYSICALLY DISABLED PERSONS, PER  
CALIFORNIA STATUTES (INCLUDING  
CIVIL CODE §§ 51, 52, 54, 54.1, and 54.3;  
BUSINESS & PROFESSIONS CODE  
§§ 17200 *et seq.*; and HEALTH & SAFETY  
CODE §§ 19955 *et seq.*); INJUNCTIVE  
RELIEF PER TITLE III, AMERICANS  
WITH DISABILITIES ACT OF 1990

21 Defendants.

DEMAND FOR JURY TRIAL

22 Plaintiff AL DE LA CAMPA complains of Defendants BENIHANA,  
23 INC.; BENIHANA NATIONAL CORPORATION; EQUITY ONE, INC.;  
24 ANGELO, GORDON & CO., L.P.; and DOES 1-20, inclusive, and each of them,  
25 and alleges as follows:

26 1. **INTRODUCTION:** This case involves the denial of accessible  
27 restaurant facilities, including denial of accessible entrances, seating, exterior and  
28 interior paths of travel, parking facilities and restrooms to plaintiff AL DE LA  
CAMP A and other disabled persons at the Benihana restaurant, located at 1989  
Diamond Blvd, Concord, California. Plaintiff AL DE LA CAMP A is a "person

with a disability” or “physically handicapped person.” Plaintiff is disabled by knee injuries and multiple knee surgeries, often requires the use of a wheelchair and/or crutches for ambulation, and finds it difficult to use portions of public facilities which are not accessible to mobility disabled persons including those who require the use of a wheelchair. During visits to the Benihana restaurant on or about November 2, 2012, November 10, 2012, and January 23, 2013, plaintiff was denied his rights to full and equal access at these facilities, and was denied his civil rights under both California law and federal law, as hereinbelow described, because these facilities were not, and are not now, properly accessible to physically disabled persons, including those who use wheelchairs or other mobility assistive devices. Despite plaintiff’s complaints to management at the time of his first specified visit, no improvements to access appear to have been made. Plaintiff seeks injunctive relief to require defendants to make these facilities accessible to disabled persons and to ensure that any disabled person who attempts to use the facilities will be provided accessible and usable facilities. Plaintiff also seeks recovery of damages for his discriminatory experiences, denials of access and denials of his civil rights, which denials are continuing as a result of defendants’ failure to provide disabled accessible facilities. Plaintiff also seeks recovery of reasonable attorney fees, litigation expenses and costs, according to statute.

2. **JURISDICTION:** This Court has jurisdiction of this action pursuant to 28 USC § 1331 for violations of the Americans with Disabilities Act of 1990, 42 USC §§ 12101 *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action arising from the same facts are also brought under California law, including but not limited to violations of California Government Code § 4450 *et seq.*; Health & Safety Code §§ 19955-19959; California Civil Code §§ 51, 52, 54, 54.1, and 54.3; California Business & Professions Code §§ 17200 *et seq.*; and Title 24 California Code of Regulations.



1           3.     **VENUE:** Venue is proper in this court pursuant to 28 USC  
2 § 1391(b) and is founded on the fact that the real property which is the subject of  
3 this action is located in this district and that plaintiff's causes of action arose in  
4 this district.

5           4.     **PARTIES:** Plaintiff is a qualified physically disabled person who  
6 has difficulty walking due to his disabilities and who has often required use of a  
7 wheelchair or crutches for locomotion. He is awaiting further knee surgery in the  
8 next six months and expects to require use of a wheelchair for an unknown period  
9 of time after such surgery. He has been issued a "disabled" parking placard by  
10 the State of California. Defendants BENIHANA, INC.; BENIHANA  
11 NATIONAL CORPORATION; EQUITY ONE, INC.; ANGELO, GORDON &  
12 CO., L.P.; and DOES 1-20, inclusive, are the owners, operators, lessors, and  
13 lessees of the business, property, building and/or portions thereof located at 1989  
14 Diamond Blvd, Concord, California. This restaurant, Benihana (hereinafter also  
15 "Restaurant"), is a "public accommodation and business establishment" subject to  
16 the requirements of California Health & Safety Code § 19955 *et seq.* and of  
17 California Civil Code §§ 54 *et seq.* On information and belief, such facilities  
18 have, since July 1, 1970, undergone construction and/or "alterations, structural  
19 repairs, or additions" subjecting such building and its parking areas to disabled  
20 access requirements per Health & Safety Code §§ 19955-19959 *et seq.* On  
21 information and believe, alterations since July 1, 1982 have also subjected the  
22 building and parking lot to disabled access requirements of California's Title 24,  
23 the State Building Code. Further, irrespective of the alteration history, such  
24 premises are subject to the "readily achievable" barrier removal requirements of  
25 Title III of the Americans With Disabilities Act of 1990.

26           5.     The true names and capacities of defendants Does 1 through 20,  
27 inclusive, are unknown to plaintiff who therefore sues said defendants by such  
28 fictitious names. Plaintiff is informed and believes that each of the defendants

1 herein designated as a Doe is legally responsible in some manner for the events  
 2 and happenings herein referred to and caused injury and damages proximately  
 3 thereby to plaintiff; plaintiff prays leave of Court to amend this Complaint to  
 4 show such true names and capacities when the same have been ascertained.

5 6. Defendants BENIHANA, INC.; BENIHANA NATIONAL  
 6 CORPORATION; EQUITY ONE, INC.; ANGELO, GORDON & CO., L.P.; and  
 7 DOES 1-20, inclusive, are and were the owners, operators, lessors and/or lessees  
 8 of the subject business, property and/or building at all times relevant to this  
 9 Complaint. Plaintiff is informed and believes that each of the defendants herein is  
 10 the agent, employee or representative of each of the other defendants, and  
 11 performed all acts and omissions stated herein within the scope of such agency or  
 12 employment or representative capacity and is responsible in some manner for the  
 13 acts and omissions of the other defendants in proximately causing the damages  
 14 complained of herein.

15  
 16 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF**  
 17 **FOR DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC FACILITIES**  
 18 **IN A PUBLIC ACCOMMODATION**  
 19 **(California Health & Safety Code §§ 19955 *et seq.*, California Civil Code**  
 20 **§§ 54 and 54.3, California Business & Professions Code §§ 17200 *et seq.*)**

21 7. Plaintiff repleads and incorporates by reference, as if fully set forth  
 22 again herein, the factual allegations contained in Paragraphs 1 through 6, above,  
 23 and incorporates them herein by reference as if separately replied hereafter.

24 8. Plaintiff AL DE LA CAMPA and other similarly situated physically  
 25 disabled persons who are mobility disabled, including but not limited to those  
 26 who require the use of a wheelchair, crutches, cane or other assistive device, are  
 27 unable to use public facilities on a "full and equal" basis unless each such facility  
 28 is in compliance with the provisions of California Health & Safety Code  
 §§ 19955 *et seq.* Plaintiff is a member of that portion of the public whose rights  
 are protected by the provisions of Health & Safety Code §§ 19955 *et seq.*



9. Health & Safety Code §§ 19955 and 19955.5 were enacted “[t]o ensure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code.” On information and belief, the provisions of both Health and Safety Code §§ 19955 and 19955.5, apply to the Restaurant, business, building, parking lot and premises located at 1989 Diamond Blvd, Concord, California. The code relating to such public accommodations also requires that “When sanitary facilities are made available for the public, clients, or employees . . . , they shall be made available for persons with disabilities.” Title 24, California Code of Regulations, formerly known as the California Administrative Code, was in effect at the time of each alteration which, on information and belief, occurred at such public facility since July 1, 1982, thus requiring access complying with the specifications of Title 24 whenever each such “alteration, structural repair or addition” was carried out. On information and belief, defendants and/or their predecessors in interest carried out alterations, structural repairs, or additions to the building during the period Title 24 has been in effect. On information and belief, alterations, structural repairs, or additions which triggered access requirements also occurred between July 1, 1970 and July 1, 1982, and required access pursuant to the A.S.A. (American Standards Association) Regulations then in effect, pursuant to the incorporated provisions of California Government Code §§ 4450 *et seq.* and California Health & Safety Code § 19959.

10. **FACTUAL STATEMENT:** On or about November 2, 2012, plaintiff AL DE LA CAMPA went to the Benihana restaurant, 1989 Diamond Blvd., in the Willows Shopping Center, Concord, to have a meal with his wife. Plaintiff was using his wheelchair due to his inability to walk as a result of knee surgery. On information and belief, there were no properly configured and signed disabled parking spaces available for patrons of the Restaurant, and the

1 parking lot signage and exterior paths of travel did not comply with Title 24 and  
2 ADAAG requirements. When plaintiff approached the entrance to the Restaurant  
3 in his wheelchair he found it difficult and uncomfortable to follow the path of  
4 travel to the entrance due to a rock studded and uneven walkway surface. At the  
5 Restaurant's entrance he was unable to open the exterior entry double doors due  
6 to their excessive weight, and, to his embarrassment, required the assistance of  
7 others to enter. Once inside the exterior doors he encountered another set of  
8 heavy, double glass doors, again was unable to open the doors due to their  
9 excessive weight, and again required assistance to enter. Plaintiff complained  
10 about the entry doors to several Restaurant management employees prior to his  
11 being seated. Plaintiff also complained to Restaurant management about the lack  
12 of proper wheelchair seating and paths of travel around and between the tables,  
13 which caused him difficulty in reaching a table. He also had difficulty fitting  
14 under the table a sufficient distance to eat comfortably rather than having to eat  
15 his food at an uncomfortable distance from the table because the table was not  
16 designed and configured for use by disabled wheelchair users.

17 11. After eating, plaintiff had need to use the restroom. He had great  
18 difficulty entering the (men's) restroom due to the excessive weight of the  
19 restroom door and it's poor design and configuration, requiring plaintiff to  
20 request assistance from another Restaurant patron, a stranger, to hold the door  
21 open for plaintiff to enter, again causing him embarrassment. Once inside the  
22 restroom, plaintiff saw that he could not use either of the two toilet stalls due to  
23 their inaccessible configuration, and was forced to limit his restroom use to a  
24 urinal. In frustration and physical discomfort from his continuing need to use a  
25 restroom, plaintiff left the Restaurant to seek an accessible restroom elsewhere.  
26 Each of the barriers encountered caused plaintiff to suffer difficulty, discomfort  
27 and embarrassment, all to his physical, mental and emotional damages.

28 12. On December 12, 2012, plaintiff and his wife returned to the



1 Benihana with their two sons for lunch because it was the birthday of one of his  
2 son's and Benihana was his son's favorite restaurant. Plaintiff was again using  
3 his wheelchair and again was unable to open either of the two sets of entrance  
4 doors without assistance. Again he had trouble with the paths of travel between  
5 the tables, and maneuvering between the tables and forcing other patrons to leave  
6 their seats in order to allow him to pass by in his wheelchair, causing him  
7 unwanted attention and embarrassment. None of the tables appeared wheelchair  
8 accessible, and even when he found seating at the "corner" of one of the tables, to  
9 allow him to approach the table, he found that the table's configuration - with  
10 inadequate "knee space" and space for his footrests - forced him to sit too far  
11 from the table to comfortably reach his food.

12 13. After the family had lunch, and after paying the bill, plaintiff had  
13 need to use the men's restroom, but again needed assistance to enter due to the  
14 excessive weight of the door and improper configuration of the restroom, with  
15 another person having to hold the door open for him. Inside the restroom there  
16 was a toilet stall which apparently was intended to be the "disabled accessible"  
17 stall. However, the stall was improperly configured, with the stall door opening  
18 into the stall space. This left no room for a wheelchair to fit inside and allow the  
19 wheelchair user to close the stall door for privacy; nor was there room inside the  
20 stall to approach or use the toilet, particularly because the stall door opened in  
21 instead of out. Plaintiff also could not close the door to achieve any privacy.  
22 Because of the improper configuration of the restroom, use of the sink for  
23 handwashing was also difficult as plaintiff's wheelchair blocked other persons  
24 from entering the restroom and caused the restroom entry door to strike plaintiff  
25 in his wheelchair. The narrow exit door from the restroom caused plaintiff to  
26 scrape his knuckles while using his hands to propel his wheelchair.

27 14. On or about January 23, 2013, plaintiff made one more attempt to  
28 patronize this Benihana restaurant with his wife and sons, this time using crutches

1 instead of his wheelchair. He again faced difficulty on entering and exiting the  
2 Restaurant and still required other persons' assistance with the two excessively  
3 heavy sets of double doors, and had other problems similar to those he  
4 experienced on his prior visits. Plaintiff again complained about the access  
5 problems to the hostess at the reception desk, and was again assured that she  
6 would bring these problems to the attention of management. However, on  
7 information and belief, none of the subject access barriers were subsequently  
8 removed, as confirmed by a visit and informal investigation of the Restaurant by  
9 plaintiff's CAsp certified access consultant prior to the filing of this lawsuit.

10 15. As a result of the described access barriers, plaintiff suffered  
11 physical, mental and emotional damages, including difficulty, discomfort and  
12 embarrassment, as he had on his previous two visits. Again, his complaints to the  
13 hostess and apparent management personnel brought apologies, but apparently no  
14 action to rectify the access problems. Plaintiff has brought this lawsuit in an  
15 effort to require that the owners and operators of the subject restaurant and  
16 property provide facilities accessible to and usable by plaintiff and other mobility  
17 disabled persons.

18 16. On information and belief, before filing this lawsuit, plaintiff's legal  
19 representatives had a CAsp-certified access consultant with more than 25 years  
20 experience do an informal investigation of the premises. While he could not  
21 make detailed measurements, he determined that the Restaurant appeared to be  
22 inaccessible to mobility disabled persons, such as plaintiff, in multiple ways,  
23 including but not limited to the following: the lack of the required number of  
24 properly configured parking spaces; the Restaurant's entrance door lacked a level  
25 landing, lacked proper hardware, was excessively heavy, and had insufficient  
26 strike edge clearance; the entryway path of travel was not smooth and level,  
27 making the route bumpy and uncomfortable for use by wheelchair users; the  
28 interior paths of travel were not sufficiently wide; there was insufficient knee



1 space for wheelchair use at all of the tables, and insufficient space for a  
 2 wheelchair user to sit anywhere without blocking the aiseways; the men's  
 3 restroom was inaccessible in multiple ways, including the lack of lever-type  
 4 hardware on the restroom door, lack of sufficient strike edge clearance on the  
 5 outside of the door, insufficient clear opening width of the doorway, lack of  
 6 sufficient landing space on the inside of the door, insufficient turning radius  
 7 inside the restroom, improper locking mechanism on the stall door for disabled  
 8 use, improperly sized and located toilet, insufficient clear floor space beside the  
 9 toilet, toilet grab bars of insufficient length, improperly located toilet paper  
 10 dispenser, sink counter of improper height and lacking sufficient clear floor space  
 11 in front of the sink, no knee space below the sink (which is enclosed in a cabinet),  
 12 improper hardware on the sink, and improper location and mounting of the  
 13 sanitary seat cover dispenser; all rendering these premises inaccessible to and  
 14 unusable by physically disabled persons. All of these items should be corrected  
 15 as part of the injunctive relief request of plaintiff's lawsuit. All facilities must be  
 16 brought into compliance with all applicable federal and state code requirements.  
 17 Further, plaintiff reserves the right to seek leave to amend this Complaint after  
 18 inspection of the Restaurant premises by his access consultants during this  
 19 litigation, pursuant to the 9<sup>th</sup> Circuit's holding in *Doran v. 7-Eleven, Inc.*, 524  
 20 F.3d 1034 (9<sup>th</sup> Cir. 2008).

21 17. Further, each and every violation of the Americans With Disabilities  
 22 Act of 1990 (as pled in the Second Cause of Action, *infra*, the contents of which  
 23 are repled and incorporated herein, word for word, as if separately repled), also  
 24 constitutes a separate and distinct violation of California Civil Code § 54(c), thus  
 25 independently justifying an award of damages and injunctive relief pursuant to  
 26 California law, including but not limited to Civil Code §§ 54.3 and Business &  
 27 Professions Code §§ 17200 *et seq.*

28 18. Further, each and every violation of the Americans With Disabilities

1 Act of 1990 (as pled in the Second Cause of Action hereinbelow, the contents of  
 2 which are repled and incorporated herein, word for word, as if separately repled),  
 3 also constitutes a separate and distinct violation of Civil Code § 54.1(d), thus  
 4 independently justifying an award of damages and injunctive relief pursuant to  
 5 California law, including but not limited to Civil Code § 54.3 and Business &  
 6 Professions Code §§ 17200 *et seq.*

7       **19. INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief to prohibit  
 8 the acts and omissions of defendants as complained of herein which are  
 9 continuing on a day-to-day basis and which have the effect of wrongfully  
 10 excluding plaintiff and other members of the public who are physically disabled,  
 11 including but not limited to wheelchair users, from full and equal access to these  
 12 public facilities. Such acts and omissions are the cause of humiliation and mental  
 13 and emotional suffering of plaintiff in that these actions continue to treat plaintiff  
 14 as an inferior and second class citizen and serve to discriminate against him on  
 15 the sole basis that he is a person with disabilities who requires disabled accessible  
 16 facilities in order to enjoy the premises on a full and equal basis. Plaintiff is  
 17 deterred by knowledge of the inaccessibility of the premises from returning to use  
 18 these facilities and is unable, so long as such acts and omissions of defendants  
 19 continue, to achieve equal access to and use of these public facilities. Plaintiff  
 20 therefore is deterred from returning to use the subject premises and its facilities  
 21 until these facilities are made properly accessible for disabled persons. Plaintiff  
 22 alleges that he intends to so return once legally required access has been  
 23 provided. The acts of defendants have proximately caused and will continue to  
 24 cause irreparable injury to plaintiff if not enjoined by this Court. Plaintiff seeks  
 25 injunctive relief as to all areas of the premises that he has personally encountered.  
 26 Further, as to all areas identified before or during this litigation by plaintiff's  
 27 access consultant, that he or other physically disabled persons may encounter in  
 28 the future (under the 9<sup>th</sup> Circuit's holding in *Doran v. 7-Eleven, Inc.* 524 F.3d



1 1034 (9<sup>th</sup> Cir. 2008)) plaintiff prays leave to amend this complaint to obtain  
 2 injunctive relief. As to those of the defendants that currently own, operate, and/or  
 3 lease (from or to) the subject premises, plaintiff seeks preliminary and permanent  
 4 injunctive relief to enjoin and eliminate the discriminatory practices and barriers  
 5 that deny full and equal access for disabled persons; to require maintenance of all  
 6 accessible features once they are provided; and for reasonable statutory attorney  
 7 fees, litigation expenses and costs.

8 20. Wherefore plaintiff asks this Court to preliminarily and permanently  
 9 enjoin any continuing refusal by defendants to grant full and equal access to  
 10 plaintiff in the respects complained of and to require defendants to comply  
 11 forthwith with the applicable statutory requirements relating to access for disabled  
 12 persons. Such injunctive relief is provided by California Business & Professions  
 13 Code §§ 17200 *et seq.*, and other law. Plaintiff further requests that the Court  
 14 award damages pursuant to Civil Code § 54.3 and other law and attorney fees,  
 15 litigation expenses, and costs pursuant to Civil Code § 54.3, Business &  
 16 Professions Code §§ 17200 *et seq.*, Code of Civil Procedure § 1021.5, and other  
 17 law, all as hereinafter prayed for.

18 21. **DAMAGES:** As a result of the denial of equal access to the subject  
 19 facilities, and due to the acts and omissions of defendants and each of them in  
 20 owning, operating, leasing, constructing, altering, and maintaining the subject  
 21 facilities, plaintiff suffered a violation of his civil rights, including but not limited  
 22 to rights under Civil Code §§ 54 and 54.1, all to his damages per Civil Code  
 23 § 54.3, including damages for physical, mental and emotional injuries, statutory  
 24 damages, and statutory treble damages, as hereinafter stated.

25 22. **TREBLE DAMAGES:** At all times herein mentioned, defendants  
 26 knew, or in the exercise of reasonable diligence should have known, that their  
 27 barriers and practices at their subject facilities violated disabled access  
 28 requirements and standards, and had a discriminatory affect upon plaintiff and

1 upon other physically disabled persons, but defendants have failed and refused to  
 2 rectify the violations, and presently continue a course of conduct in maintaining  
 3 architectural barriers that discriminate against plaintiff and similarly situated  
 4 disabled persons. On information and belief, an award of treble damage pursuant  
 5 to California Civil Code § 54.3 would be appropriate.

6       **23. FEES AND COSTS:** As a result of defendants' acts, omissions, and  
 7 conduct, plaintiff has been required to incur attorney fees, litigation expenses, and  
 8 costs in order to enforce plaintiff's rights and to enforce provisions of the law  
 9 protecting access for disabled persons and prohibiting discrimination against  
 10 disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney  
 11 fees, litigation expenses, and costs, pursuant to the provisions of Civil Code  
 12 § 54.3. Additionally, plaintiff's lawsuit is intended to require that defendants  
 13 make their facilities accessible to all disabled members of the public, justifying  
 14 "public interest" attorney fees, litigation expenses and costs pursuant to the  
 15 provisions of California Code of Civil Procedure § 1021.5 and other applicable  
 16 law.

17       WHEREFORE, plaintiff prays for damages and injunctive relief as  
 18 hereinafter stated.

19  
 20                               **SECOND CAUSE OF ACTION:**  
 21       **VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT,**  
 22       **CIVIL CODE SECTIONS 51 AND 52, AND THE AMERICANS WITH**  
                               **DISABILITIES ACT AS INCORPORATED**  
                               **BY CIVIL CODE SECTION 51(f)**

23       **24.** Plaintiff repleads and incorporates by reference, as if fully set forth  
 24 hereafter, the factual allegations contained in Paragraphs 1 through 23 of this  
 25 Complaint and incorporates them herein.

26       **25.** At all times relevant to this complaint, California Civil Code § 51  
 27 has provided that physically disabled persons are free and equal citizens of the  
 28 state, regardless of disability or medical condition:



1 All persons within the jurisdiction of this state are free and equal,  
 2 and no matter what their sex, race, color, religion, ancestry, national  
 3 origin, disability, or medical condition are entitled to the full and  
 4 equal accommodations, advantages, facilities, privileges, or services  
 in all business establishments of every kind whatsoever.  
 Cal. Civ. C. § 51(b).

5 26. California Civil Code § 52 provides that the discrimination by  
 6 defendants against plaintiff on the basis of his disabilities constitutes a violation  
 7 of the anti-discrimination provisions of §§ 51 and 52.

8 27. Defendants' discrimination constitutes a separate and distinct  
 9 violation of California Civil Code § 52, which provides that:

10 Whoever denies, aids or incites a denial, or makes any discrimination  
 11 or distinction contrary to section 51, 51.5, or 51.6 is liable for each  
 12 and every offense for the actual damages, and any amount that may  
 13 be determined by a jury, or a court sitting without a jury, up to a  
 14 maximum of three times the amount of actual damage but in no case  
 less than four thousand dollars (\$4,000), and any attorney's fees that  
 may be determined by the court in addition thereto, suffered by any  
 person denied the rights provided in Section 51, 51.5, or 51.6.

15 28. Any violation of the Americans With Disabilities Act of 1990 (as  
 16 pled in the Third Cause of Action) constitutes a violation of California Civil Code  
 17 § 51(f) thus independently justifying an award of damages and injunctive relief  
 18 pursuant to California law. Per § 51(f), "A violation of the right of any individual  
 19 under the Americans With Disabilities Act of 1990 (Public Law 101-336) shall  
 20 also constitute a violation of this section."

21 29. The actions and omissions of defendants as herein alleged constitute  
 22 a denial of access to and use of the described public facilities by physically  
 23 disabled persons within the meaning of California Civil Code §§ 51 and 52. As a  
 24 proximate result of defendants' action and omissions, defendants have  
 25 discriminated against plaintiffs in violation of Civil Code §§ 51 and 52.

26 30. **FEES AND COSTS:** As a result of defendants' acts, omissions and  
 27 conduct, plaintiff has been required to incur attorney fees, litigation expenses and  
 28 costs as provided by statute in order to enforce plaintiff's rights and to enforce

provisions of the law protecting access for disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney fees, litigation expenses and costs pursuant to the provisions of California Civil Code §§ 51 and 52. Additionally, plaintiff's lawsuit is intended to require that defendants make their facilities and policies accessible to all physically disabled members of the public, justifying "public interest" attorney fees, litigation expenses and costs pursuant to the provisions of California Code of Civil Procedure § 1021.5 and other applicable law.

Wherefore, plaintiff prays the Court grant relief as requested hereinbelow.

**THIRD CAUSE OF ACTION:  
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990  
42 USC §§ 12101 *et seq.***

31. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in Paragraphs 1 through 30 of this Complaint, and incorporates them herein as if separately repled.

32. In 1990 the United States Congress made findings that laws were needed to more fully protect "some 43,000,000 Americans [with] one or more physical or mental disabilities;" that "historically, society has tended to isolate and segregate individuals with disabilities;" that "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;" that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals;" and that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous..." 42 USC §12101.

33. In passing the Americans with Disabilities Act of 1990 (hereinafter "ADA"), Congress stated as its purpose:



1 It is the purpose of this Act

2 (1) to provide a clear and comprehensive national mandate for the  
3 elimination of discrimination against individuals with disabilities;

4 (2) to provide clear, strong, consistent, enforceable standards addressing  
5 discrimination against individuals with disabilities;

6 (3) to ensure that the Federal Government plays a central role in enforcing  
7 the standards established in this Act on behalf of individuals with  
8 disabilities; and

9 (4) to invoke the sweep of congressional authority, including the power to  
10 enforce the fourteenth amendment and to regulate commerce, in order to  
11 address the major areas of discrimination faced day-to-day by people with  
12 disabilities. (Emphasis added)

13 42 USC § 12101(b).

14 34. As part of the ADA, Congress passed "Title III - Public  
15 Accommodations and Services Operated by Private Entities." 42 USC § 12181 *et*  
16 *seq.* The subject property and facility is one of the "private entities" which are  
17 considered "public accommodations" for purposes of this title, which includes  
18 any "restaurant, bar, or other sales or rental establishment serving food or drink."  
19 § 301(7)(B).

20 35. The ADA states that "No individual shall be discriminated against on  
21 the basis of disability in the full and equal enjoyment of the goods, services,  
22 facilities, privileges, advantages, or accommodations of any place of public  
23 accommodation by any person who owns, leases, or leases to, or operates a place  
24 of public accommodation." 42 USC § 12182. The specific prohibitions against  
25 discrimination included, but were not limited to the following:

26 § 302(b)(1)(A)(ii): "Participation in Unequal Benefit. - It shall be discriminatory  
27 to afford an individual or class of individuals, on the basis of a disability or  
28 disabilities of such individual or class, directly, or through contractual, licensing,  
or other arrangements, with the opportunity to participate in or benefit from a  
good, service, facility, privilege, advantage, or accommodation that is not equal to  
that afforded to other individuals."

1 § 302(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,  
2 practices, or procedures when such modifications are necessary to afford such  
3 goods, services, facilities, privileges, advantages, or accommodations to  
4 individuals with disabilities...;”

5 § 302(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure  
6 that no individual with a disability is excluded, denied service, segregated, or  
7 otherwise treated differently than other individuals because of the absence of  
8 auxiliary aids and services...;”

9 § 302(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication  
10 barriers that are structural in nature, in existing facilities... where such removal is  
11 readily achievable;”

12 § 302(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier  
13 under clause (iv) is not readily achievable, a failure to make such goods, services,  
14 facilities, privileges, advantages, or accommodations available through alternative  
15 methods if such methods are readily achievable.”

16 The acts and omissions of defendants set forth herein were in violation of  
17 plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28  
18 CFR Part 36 *et seq.*

19 36. On information and belief, the removal of each of the barriers  
20 complained of by plaintiff as hereinabove alleged, were at all times herein  
21 mentioned “readily achievable” under the standards §§ 301 and 302 of the ADA,  
22 including comparing the cost of removal of each barrier to access against the  
23 overall financial resources of all owners, operators, lessors and lessees of the  
24 property, and assessing the standards of §§ 301 and 302 of the ADA, as  
25 interpreted by Department of Justice regulations and 9<sup>th</sup> Circuit case law  
26 standards. As noted hereinabove, removal of each and every one of the  
27 architectural barriers complained of herein were also required under California  
28 law. Further, on information and belief, alterations, structural repairs or additions



1 since January 26, 1993 have also independently triggered requirements for  
2 removal of barriers to access for disabled persons per § 303 of the ADA. In the  
3 event that removal of any barrier is found to be “not readily achievable,”  
4 defendants still violated the ADA, per § 302(b)(2)(A)(v) by failing to provide all  
5 goods, services, privileges, advantages and accommodations through alternative  
6 methods that were readily achievable.

7 37. On information and belief, as of the date of plaintiff’s encounter at  
8 the subject premises and as of the filing of this Complaint, the premises have  
9 denied and continue to deny full and equal access to plaintiff and to other  
10 disabled persons, including wheelchair users, in other respects, which violate  
11 plaintiff’s rights to full and equal access and which discriminate against plaintiff  
12 on the basis of his disability, thus wrongfully denying to plaintiff the full and  
13 equal enjoyment of the goods, services, facilities, privileges, advantages and  
14 accommodations, in violation of §§ 301, 302 and 303 of the ADA. 42 USC  
15 §§ 12181, 12182 and 12183.

16 38. On information and belief, defendants have continued to violate the  
17 law and deny the rights of plaintiff and other disabled persons to access this  
18 public accommodation since on or before plaintiff’s encounters. Pursuant to the  
19 ADA, § 308, 42 USC 12188 *et seq.*, plaintiff is entitled to the remedies and  
20 procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-  
21 3(a), as plaintiff is being subjected to discrimination on the basis of disability in  
22 violation of the ADA or has reasonable grounds for believing that he is about to  
23 be subjected to discrimination. Pursuant to § 308(a)(2), “In cases of violations of  
24 § 302(b)(2)(A)(iv) and § 303(a). . . , injunctive relief shall include an order to alter  
25 facilities to make such facilities readily accessible to and usable by individuals  
26 with disabilities to the extent required by this title.”

27 39. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the  
28 Civil Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal

1 Regulations adopted to implement the Americans with Disabilities Act of 1990.  
 2 Plaintiff is a qualified disabled person for purposes of § 308(a) of the ADA who  
 3 is being subjected to discrimination on the basis of disability in violation of Title  
 4 III and who has reasonable grounds for believing he will be subjected to such  
 5 discrimination each time that he may attempt to use the property and premises.

6 WHEREFORE, plaintiff prays for damages and injunctive relief as  
 7 hereinafter stated.

8  
 9 **FOURTH CAUSE OF ACTION:**  
**VIOLATION OF UNFAIR COMPETITION ACT**  
 10 **(California Business and Professions Code sections 17200 *et seq.*)**

11 40. Plaintiff repleads and incorporates by reference, as if fully set forth  
 12 again herein, the allegations contained in Paragraphs 1 through 39 of this  
 13 Complaint, and incorporates them herein as if separately repled

14 41. On information and belief, defendants BENIHANA, INC.;  
 15 BENIHANA NATIONAL CORPORATION; EQUITY ONE, INC.; and  
 16 ANGELO, GORDON & CO., L.P. are each a for-profit corporation organized  
 17 under California law.

18 42. On information and belief, defendants, and each of them, have  
 19 engaged and are engaged in unfair competition, unfair or fraudulent business  
 20 practices and unfair, deceptive, untrue or misleading advertising in violation of  
 21 the Unfair Competition Act. Bus. & Prof. C. §§ 17200 *et seq.*

22 43. On information and belief, defendants, and each of them, engage in  
 23 business practices and policies that create systemic barriers to equal access for  
 24 people with mobility disabilities. Their practice is to create and maintain a public  
 25 accommodation that contains physical barriers to access in violation of state and  
 26 federal law, to create and maintain policies that blame the disabled person for  
 27 his/her inability to achieve equal access, and to offer humiliating false alternatives  
 28 such as the requirement that disabled persons must request assistance from others,



1 including strangers, in entering the Restaurant, entering and using the restroom,  
2 and finding a usable path of travel to reach usable seating, including requiring  
3 other patrons to move from their seats in order to allow passage to and from  
4 dining seating locations at tables.

5 44. On information and belief, defendants, and each of them, are in  
6 violation of the Americans with Disabilities Act, California Civil Code sections  
7 51, 52, 54, and 54.1, California Government Code sections 4450 *et seq.*, and  
8 California Health and Safety Code sections 19955 *et seq.*, as well as regulations  
9 under California Building Code Title 24 and the American with Disabilities Act  
10 Standards (ADAAG regulations). State and federal statutory schemes are  
11 intended to provide people with disabilities full and equal access to places of  
12 public accommodation and businesses, including restaurants. "Full and equal"  
13 disabled access has been identified in state and federal decisions as a public  
14 policy of the highest order under California law and under the ADA.

15 45. Violations of these access statutes were and are unlawful. Violations  
16 of these statutes also violate established concepts of fairness, are immoral,  
17 unethical, oppressive and unscrupulous.

18 46. On information and belief, the unfair business practices and policies  
19 were also fraudulent: the Benihana restaurant and its owners and operators holds  
20 itself out as a place of public accommodation, welcome to all and code-compliant.  
21 It is a very popular restaurant, drawing consumers from all over the area. It is  
22 likely to deceive consumers who are disabled into believing it offers full and  
23 equal access, particularly because the laws requiring access have been in effect  
24 for more than 40 years in California and more than 20 years under federal law,  
25 including the Americans with Disabilities Act of 1990, its ADAAG regulations  
26 and Department of Justice regulations.

27 47. The unfair business practices and policies were unfair and injurious  
28 to plaintiff, a consumer of the Benihana's goods and services. He suffered injury

1 in fact and has lost money or property as a result of defendants' unfair business  
2 practices and policies. He took time and effort and spent money to travel to and  
3 utilize the goods and services of the Restaurant, on the belief that the Restaurant  
4 would be accessible and that he, as a disabled person, would be given full and  
5 equal access. He was given less access to the goods and services of the  
6 Restaurant than other consumers, although he paid the same price for them as  
7 other consumers pay, e.g., he could not use the restroom that is offered to all  
8 customers, he could not travel with ease through the Restaurant, he could not sit  
9 with ease at the table, and he had to draw unwanted attention to himself in order  
10 to obtain the assistance of others, all to his difficulty, discomfort and  
11 embarrassment. His enjoyment of the Restaurant's goods and services was  
12 reduced further when he complained about the lack of proper access because he  
13 was required to spend time trying to obtain access that would otherwise have been  
14 unnecessary had defendants not engaged in their unfair practices and policies. He  
15 has been forced to expend time and energy to try to remediate the inequality and  
16 receive equal goods and services as defendants provide to other consumers.

17 48. Plaintiff seeks relief in the form of such orders, including an  
18 injunction or court-enforceable consent decree, as may be necessary to prevent the  
19 continued use of defendants' unfair business practices and policies, and seeks  
20 restitution to restore to him any money that defendants acquired by means of such  
21 unfair competition, including profits unfairly obtained to the extent that these  
22 profits represent monies given to the defendants by plaintiff.

23 49. Because enforcement of the panoply of equal access laws for people  
24 with disabilities is a public policy of the highest order, plaintiff seeks  
25 compensation for his attorney fees, litigation cost and expenses expended in the  
26 public interest in bringing this lawsuit. California Code of Civil Procedure  
27 § 1021.5.

28 //



**PRAYER**

Plaintiff prays that this Court:

1. Issue a preliminary and permanent injunction directing defendants as current owners, operators, lessors, and/or lessees of the property and premises to modify the above described property and premises and related facilities so that each provides full and equal access to all persons, including but not limited to persons with physical disabilities who use wheelchairs, and issue a preliminary and permanent injunction directing defendants to provide and maintain facilities usable by plaintiff and similarly situated persons with disabilities, and which provide full and equal access, as required by law, including appropriate changes in policy;

2. Retain jurisdiction over the defendants until such time as the Court is satisfied that defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur, and can not recur;

3. Award to plaintiff all appropriate damages, including but not limited to statutory damages, general damages and treble damages in amounts within the jurisdiction of this Court, all according to proof;

4. Award to plaintiff all reasonable restitution for defendants' unfair competitive practices;

5. Award to plaintiff all reasonable statutory attorney fees, litigation expenses, and costs of this proceeding as provided by state and federal law;

6. Award to plaintiff prejudgment interest pursuant to California Civil Code § 3291;

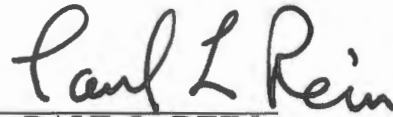
7. Grant such other and further relief as this Court may deem just and proper.

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1 Dated: May 10, 2013

LAW OFFICES OF PAUL L. REIN



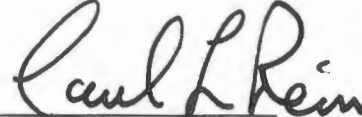
By PAUL L. REIN  
Attorneys for Plaintiff  
AL DE LA CAMPA

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

10 Dated: May 10, 2013

LAW OFFICES OF PAUL L. REIN



By PAUL L. REIN  
Attorneys for Plaintiff  
AL DE LA CAMPA



**VERIFICATION OF COMPLAINT**

(Pursuant to California Code of Civil Procedure § 425.50)

1. I am the above-named plaintiff and am suing herein as an individual.
2. I have read the attached Verified Complaint for Injunctive Relief and Damages. I am familiar with the facts alleged therein, and hereby verify that the factual allegations contained in the aforementioned Verified Complaint are true and correct to the best of my information, understanding and belief.

I verify the above statement under penalty of perjury, and under the law of the State of California, in the City of Oakland, California.

Dated: May 10, 2013

  
\_\_\_\_\_  
Plaintiff AL DE LA CAMPA